

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

THOMAS BARTON,

Petitioner,

: Case No. 1:09-cv-353

- vs -

District Judge William O. Bertelsman
Magistrate Judge Michael R. Merz

PHILLIP KERNS, Warden,
Southern Ohio Correctional Facility,

:

Respondent.

REPORT AND RECOMMENDATIONS

As directed by the Court, Petitioner's counsel has filed the Judgment of the Warren County Court of Common Pleas subject to collateral attack in this habeas corpus action has been vacated (ECF No. 64, PageID 2571). That Entry complies with the decision of the Sixth Circuit in this case reported at *Barton v. Warden, S. Ohio Corr. Facility*, 786 3d 450 (6th Cir. 2015). The prior judgment having been vacated, the above-captioned case should be dismissed as moot.

September 30, 2016.

s/ *Michael R. Merz*
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F). Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 153-55 (1985).